INTERPROVINCIAL PRODUCT LIABILITY LITIGATION: JURISDICTION, ENFORCEMENT AND CHOICE OF LAW IN QUEBEC PRIVATE INTERNATIONAL LAW

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SUMMARY OF STUDY

This study deals with interprovincial litigation in the area of product liability.

Such interprovincial litigation may take two forms, namely:

1. A Quebec consumer buys an unacceptable product in Quebec or elsewhere in Canada, and it is manufactured or distributed by someone having no place of business or assets in Quebec. When does he have a right to institute proceedings in a Quebec court? This of course raises the question of the jurisdiction such a court has over a non-Quebec defendant.

2. In the same way we can take the case of a non-Quebec consumer, who has obtained judgment from another province against a manufacturer or distributor who has assets, a place of business or a residence in Quebec. When can he obtain exectuion of this judgment in the courts of this province?

In each of the two situations above, a third problem arises, namely that of the rules of conflict of law: what law will apply to an action instituted in Quebec by a consumer?

The problems raised are far from academic in nature. A Quebec consumer who has purchased a product made or distributed by an Ontario company will want to bring his action in Quebec.

If he cannot do so because the Quebec court lacks jurisdiction, he may have to waive his right of action, in view of the cost involved. In the same way, although he has a right to bring his action in a Quebec court, he may waive that right if he knows in advance that an Ontario court will not recognize the judgment.

Consumers in the other provinces face the same problems where Quebec is concerned. It is for this reason that, in seeking solutions to the problems raised, considerations affecting all of Canada must be borne in mind.

It is clear that a Canadian consumer who must waive a right of action because he has to exercise it in a foreign province, or because any judgment which he may obtain in his own province might not be executed in another province, will feel hard done by and disillusioned by our system of justice.

The existing judicial machinery is inadequate and involves enormous expenditure compared to the benefits which the consumer hopes to receive. This is even more unacceptable in light of the fact that the distribution and sale of consumer products takes place on a national scale, whereas at the judicial level each Canadian province acts like a quasi-sovereign country.

The consumer, therefore, must purchase in his province products distributed throughout Canada, without thereby acquiring any nationally recognized legal remedy.

We have examined each of the factors as they exist in the Province of Quebec at the present time, and then suggested certain proposals for modernizing our laws.

The first consideration involves the international jurisdiction of Quebec courts or, in other words, their jurisdiction over foreign defendants.

They will have jurisdiction if:

1. the defendant resides or owns property in Quebec;

2. the entire cause of action arose there;

3. the contract was concluded there; or

4. the action was served on the defendant personally in Quebec.

If any of these conditions is not met, the Quebec court will have no jurisdiction.

These rules are outdated; furthermore, they are very little improved by the draft Civil Code revision.

The second consideration involves the recognition by a Quebec court of a foreign judgment, in order to enable it to be executed in Quebec.

These rules are old and inadequate. The consumer is required to bring a new action in Quebec, seeking recognition and enforcement of his judgment. Such recognition will be given when the Quebec defendant contested the action or when it was served on him personally. Otherwise, he will be entitled to contest the application for recognition filed in Quebec.

The final problem involves the law which the Quebec court will apply in arriving at its decision. Often, the court will have to interpret a contract in accordance with the law of another province, which may be very different to that of Quebec.

The following are the recommendations we have made with a view to ensuring that the rules in this area are more in line with modern requirements.

1. Each Canadian province should acquire international jurisdiction over the absent seller. In short, a consumer should have the right to bring his actions in his own province, against any absent seller, although the latter has no place of business or assets in that province.

2. The absent seller would be a manufacturer or distributor bringing in his goods in the normal course of business in Canada. The tests to determine who was an absent seller would be in accordance with the observations made in Morand v. Pyle.

3. The law applicable to such litigiation would be that of the province in which the consumer purchased the product.

4. Any judgment rendered would be almost automatically recognized by the court in the province of the absent seller. Formalities and costs would be kept to a minimum.

In order to give effect to the foregoing proposals, the provinces could follow the example of the United States and allow the federal government to draft a uniform code to which each province would subscribe. Alternatively, the provinces could conclude reciprocal agreements by which each one would undertake to apply identical rules regarding the jurisdiction of the courts, the recognition of foreign judgments, and the law applicable to litigation.

The second alternative might be more suited to the present political situation in Canada.

In any case, it would be desirable for the federal government to propose changes in this area, ask the provinces to consider them and give effect to these changes as they saw fit.

DAVID APPEL

CHAPTER I - INTRODUCTION

The purpose of this brief is to complement the brief prepared by Professor Robert J. Sharpe, dealing with interprovincial litigation and product liability. Professor Sharpe's brief dealt with the question in the context of the common law; this brief will consider the same problems in the context of the civil law in the Province of Quebec.

It should be noted at the outset that Quebec law in this field is very similar to the common law. We believe, therefore, that it would be very useful, first of all, to examine Professor Sharpe's brief before reading this brief.

The two situations in which Canadian consumers find themselves may be summarized as follows:

The Jurisdiction of Quebec Courts

The first situation is that of a Quebec consumer who purchases, either in Quebec or elsewhere in Canada, a product manufactured or distributed by a company or individual having no place of business or residence in Quebec. In what circumstances could that consumer bring an action in a Quebec court? In other words, when will a Quebec court exercise its jurisdiction against a non-Quebec defendant?

Recognition and Enforcement of an Extra-Provincial Judgment in Quebec

The second situation is that of a non-Quebec consumer who has obtained a judgment in another province against a manufacturer, distributor or individual having no assets, place of business or residence in Quebec. What value does such a judgment have in Quebec? In other words, in what circumstances will a Quebec court recognize a judgment from another province so as to enable it to be enforced in Quebec? This raises the issue of the enforcement of foreign judgments in Quebec.

These two situations lead inevitably to a third issue, namely choice of law.

Choice of Law Rules

What law applies to an action brought in Quebec by a Quebec consumer against a foreign manufacturer or distributor? Similarly, what provincial law will govern an action brought by a non-Quebec consumer in a Quebec court seeking to obtain recognition and enforcement in Quebec of a foreign judgment?

These three situations define the scope of this study. They are, however, closely related and it is most difficult to deal with them in isolation.

Professor Sharpe's brief gives an example which includes all the elements of the problem; it may be summarized as follows:

Jean, who is a resident of Quebec, purchases a stove in Quebec. The manufacturer of the stove is an Ontario company having no place of business, assets or agent outside Ontario, but which distributes its products across Canada. Jean realizes, after purchasing the stove, that it is defective and wants to sue the Ontario company for the purchase price.

The first problem is to decide upon the province in which suit is to be brought. Jean would, of course, prefer to litigate in the Province of Quebec. But can a Quebec court hear the case? And if so, what will be the value of the judgment outside of Quebec? What law will a Quebec court apply if it does accept jurisdiction?

If the facts are changed and Jean becomes an Ontario consumer who buys a stove produced by a Quebec manufacturer having no place of business, assets or agent in Ontario, the same problem arises, only in reverse. The Ontario consumer wants to bring an action in Ontario. In this case, assumingg that he obtains judgment in his favour, will it be of any value in Quebec? Will a Quebec court recognize the Ontario judgment, and will it then authorize enforcement of the judgment?

The problems posed are far from academic. An aggrieved consumer will be frustrated and bitter if he has no effective remedy against the manufacturer or the distributor of a product. If all means of redress seem useless and illusory, the consumer will think our system of justice inadequate and unjust.

Unfortunately, it must be recognized that in this area in Quebec, the rules of procedure are insufficient and operate to the disadvantage of the injured consumer. The present legal mechanisms are deficient, and the consumer is in an area fraught with pitfalls and dangers. Moreover, because the costs are enormous compared to the potential benefits, the consumer often will not avail himself of a valid remedy.

In practice, the consumer must undertake two separate actions to obtain the desired result. In the above example, the consumer must first obtain a second judgment in the province where the judgment is to be enforced. Therefore, it will cost him twice as much as proceeding against a manufacturer in his own province.

If, on the other hand, the consumer chooses to avoid this duplication by bringing an action in the manufacturer's province, there is still a large additional financial burden. The consumer will have travelling expenses between his residence and the province in which the action is brought. There will also be the travelling expenses of witnesses during trial and discovery. He will also have to pay lawyers' fees in that province, often at rates that are quite different from those in the consumer's own province. For example, in Quebec, lawyers are entitled to accept contingency fees, while in Ontario the practice is prohibited; this means that in Ontario the Quebec consumer must assume all risks of the action, while in Quebec the risk could have been shared.

An added inconvenience is that the consumer must bring the action in a province in which the rules and methods are different from those with which he is familiar and which therefore make him feel insecure.

Of course, if the situation were reversed and the foreign manufacturer were obliged to appear before a Court in the consumer's province, then the manufacturer would face the same burden. The question is, therefore, which party should be required to carry this additional burden.

Before answering this question, it should be emphasized that in Quebec there is an established body of jurisprudence which has developed the concept of the liability of the "near vendor" manufacturer. One would hope that the other provinces will accept this concept, which would solve many problems that arise with respect to the jurisdiction of provincial courts and with respect to recognition and enforcement of foreign judgments. Acceptance of this concept would also solve the problem of who should bear the additional financial burden described above.

In Quebec, as in other parts of Canada, the rules of procedure in this area are inadequate. They do not meet the needs of a modern economy in a country where the distribution and sale of consumer goods take place on a national scale. In short, in legal matters, each province, like Quebec, acts as a quasi-sovereign country while in economic matters activity is national in nature and provincial boundaries have little practical significance. It is, therefore, illogical and unfair to encourage consumers to purchase, in their own provinces, products that are distributed throughout Canada while denying them a legal remedy that is also nationally recognized.

The Automobile Protection Association (APA) raised this problem in relation to non-Quebec companies selling rust-proofing treatments for new cars in Quebec. The APA specifically denounced companies such as DuraCoat, of Ontario, and Rustop, of Nova Scotia, which were selling rust-proofing treatments guaranteed for five years or the life of the vehicle, through dealers in Quebec. Between 1972 and 1975, the APA received hundreds of complaints concerning these rust-proofing treatments and the failure of the two companies to honour their guarantees. Several Quebec consumers obtained judgments in Quebec courts against these companies, but unfortunately, these judgments had no value in Quebec, because the companies had no assets there. In such a situation, the Quebec consumer had no effective remedy and most of them were unwilling to bring an action outside Quebec for an amount between $200 and $500. Why bring an action in Niagara Falls, Ontario, or Halifax, Nova Scotia, with all the costs? These cases clearly demonstrate that the present system gives definite advantage to the vendor who is entirely absent from Quebec when the amount in dispute is small. These cases also clearly show that the rules of the game should be changed in order to adjust them to the present situation.

In the field of mail-order sales, this need is even more obvious if we want Canadians to continue to respect our system of justice.

In the light of these examples, we shall examine the Quebec rules concerning the jurisdiction of the courts and the recognition and enforcement of foreign judgments, the new rules proposed by the Civil Code Revision Office, and finally our own proposals in the national context.

CHAPTER II - INTERNATIONAL COMPETENCE OF QUEBEC COURTS - JURISIDCTION

(a) Introduction

We have already cited the example of the case of a Quebec consumer who has purchased a defective stove that was manufactured or distributed by a company outside Quebe. This consumer would undoubtably be very surprised to learn that a Quebec court could decline to hear the case for want of jurisdiction. In the mind of the consumer, the court in his province should automatically have jurisdiction, since the product was purchased in Quebec by a Quebecer.

However, this is not the case. Quebec courts do not inevitably have jurisdiction over defendants outside Quebec. The Code of Civil Procedure of the Province of Quebec sets out rules for determining the jurisdiction of a domestic court over foreigners. There is a considerable body of case law interpreting these rules in a manner generally consistent with common law principles. Ist should be noted, however, that Quebec courts have been more reluctant to accept jurisidction.

(b) General Principles Concerning International Competence of Quebec Courts

The Code of Civil Procedure (hereafter CCP) was revised in 1965. Despite this revision, the sections dealing with international jurisdiction of the courts follow very closely the provisions of the former Code of Procedure, which dates from 1897. Accordingly, we still have obsolete rules dating from the nineteenth century although the circumstances to which they apply have dramatically changed in recent years.

The primary source of the rules of private international law in questions of jurisdictional competence is CCP, Art. 68 which states:[1]

> 68. Subject to the provisions of articles 70, 71, 74 and 75, and not withstanding any agreement to the contrary, a purely personal action may be instituted:
> 1. Before the court of the defendant's real domicile or, in the cases contemplated by article 85 of the Civil Code, before that of his elected domicile.
> If the defendant has no domicile in the province but resides or possesses property therein, he may be sued

before the court of his ordinary residence, before the court of the place where such property is situated, or before the court of the place where the action is personally served upon him;

2. Before the court of the place where the whole cause of action has arise; or, in an action for libel published in a newspaper, before the court of the district where the plaintiff resides if the newspaper has circulated therein;

3. Before the court of the place where the contract which gives rise to the action was made.

A contract giving rise to an obligation to deliver, negotiated through a third party who was not the representative of the creditor of such obligation, is deemed to have been made at the place where the latter gave his consent.

This Article has been interpreted as relating to "l'ordre publique" (public order). Thus the words "notwithstanding any agreement to the contrary"[2] have been interpreted as absolutely preclucing contracting out of the terms of the Article.

There are, however, certain exceptions to CCP, Art. 68, set out in CCP, Art. 70 to 75. For the purposes of this study, we need only concern ourselves with CCP, Art. 75. This Article provides that if the action is brought against several defendants domiciled in different districts, it may be brought in a court in which any one of the defendants may be summoned.

The wording could lead to a belief that a consumer who has bought a car, manufactured by a foreign manufacturer, from a Quebec dealer could bring an action against both parties in a Quebec court, even if the manufacturer were completely outside its jurisidction.

However, this is not the case, since a judgment of the Quebec Court of Appeal has decided that the word "district" has no international or extra-provincial aspect and refers only to a judicial district within Quebec.[3] According to Professor Sharpe's study, this appears to be contrary to the position taken by the courts of common law provinces. Those courts appear to have, in effect, accepted the first interpretation, that if one defendant falls within the jurisdiction of a court, the other defendant also becomes subject to that jurisdiction.

As a result of this very restrictive interpretation, CCP, Art. 68 is the only jurisdictional provision upon which a Quebec consumer can rely. The extent of the competence of Quebec courts is, therefore, severely limited.

(c) In Personam Jurisdiction of Quebec Courts Pursuant to CCP, Article 68

CCP, Art. 68 sets out the normal rules concerning international jurisdiction. More specifically, the court will have jurisdiction in the following cases:

(1) if the defendant is domiciled in Quebec or has elected domicile in Quebec;

(2) if the defendant is a resident of Quebec;

(3) if the defendant has property in Quebec;

(4) if the defendant is personally served while he is present in Quebec;

(5) if the entire cause of action arose in the Province of Quebec;

(6) if the contract which gives rise to the claim was concluded in Quebec.

(i) Domicile of the Defendant

"Domicile" means the intention of the defendant to maintain Quebec domicile and the fact of doing so. The courts have decided that the domicile of a corporation is at its he office.[4]

The courts have sanctioned election of domicile made by foreigners in order to submit their actions to the courts of this province.[5]

(ii) Possession of Property in Quebec

As stated above, a Quebec court has jurisdiction over a foreign defendant if the defendant possesses property in Quebec. What does this requirement mean? In a leading decision, the Court of Appeal decided that the simple possession of an office, with the minimum of goods to furnish it, is insufficient.[6]

As Casey J. stated in First National Bank of Boston v La Sarchi Co:

> "Thus our problem is to decide whether the proof made estblishes this essential fact that defendant has at the institution of the action, property of the type that could have been seized in satisfaction of the judgment that plaintiff seeks..."

Thus, the property of a defendant must be real, tangible and sufficient; and must exist not only at the date the writ is issued but also when it is served.[7]

This is thus a serious restriction on the jurisdiction of a Quebec court.

Moreover, the word "property" does not carry any restriction according to the case law. It can include shares in a corporation, choses in action, and money deposited in trust.[8]

(iii) The Place Where the Whole Cause of Action Arose

In a definitive juidgement of the Privy Council, Trower and Son Ltd. v Ripstein and Gillespie (1944)[9], the test for determining where the whole cause of action arose is as follows:

> "A cause of action is the entire set of facts and circumstances that give rise to an enforceable claim. The phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment.[10]

According to this interpretation, all the facts that give rise to an action in contract or tort and that are essential to the existence of the cause of action must take place in Quebec. This means that a consumer cannot bring action against a defendant who is a manufacturer outside of Quebec with no assets in Quebec if the product is manufactured outside the province, the manufacture of the product being an element of the "whole" cause of action. In other words, this aspect of the case, having occurred outside Quebec, excludes the jurisdiction of the Quebec courts.

Thus, the very restrictive judicial interpretation of the words "the whole cause of action" reduces the effective scope of the Article almost to nothing.11

In light of this judicial interpretation, it must be concluded that this Article provides little assistance to the Quebec consumer against a vendor or manufacturer outside Quebec.

(iv) The Place Where the Contract is Made

The preceding criterion is generally used in tort actions. In contractual matters, the test is usually where the conract was made.

In order to determine the place where the contract was made, often we must know the date of signing, particularly for contracts concluded by correspondence or for contracts between extra-provincial parties. There is a large body of case law determining the place and the time a contract is made.12

The last paragraph of subsection 3 of Art. 68 permits Quebec courts to assume broader international jurisdiction with respect to non-Quebec defendants. The courts have thus interpreted this subsection in a very broad manner.13

(d) The Jurisdiction of Quebec Courts Under The Draft Revision of the Civil Code

In 1977, the Civil Code Revision Office prepared a draft revision of the Civil Code.14

In Chapter 3 of Book IX, entitled "Private International Law" concerning conflicts of jurisdiction, the authors dealt specifically with the international competence of Quebec Courts.

Article 48 of this draft proposes to replace completely Art. 68 of the present Code of Civil Procedure by the following:

> Art. 48 - In matters involving personal rights of a patrimonial nature, the courts of Quebec have general jurisdiction when:

(The law in this area may have been affected by the decision of the Supreme Court of Canada in Westcoast Limited v. The Kelowna Flying Machinery Co., handed down after the study was written. - ed. note.)

1. the defendant is domiciled in Quebec, or, if the defendant is a corporate person, if it was incorporated in Quebec or has its head office, a place of business, or a branch office for disputes relating to its activities in Quebec;

2. the cause of action has arisen in Quebec;

3. the parties, by an express choice of forum agreement, have submitted to Quebec courts any existing or future dispute between themselves relating to a specific legal relationship; or

4. the defendant has submitted himself to the jurisdiction of Quebec courts, either expressly or by contesting on the merits without reervation as to jurisdiction.

It should be noted here that this Article embodies the Hague Convention on Agreements for Choice of Forum.

Article 48 will also include certain improvements to the traditional rules of jurisdiction contained in CCP Art. 68 permitting corporate persons that do not have a branch office or place of business in Quebec to be summoned before Quebec courts.

In tort cases, the requirement in CCP, Art. 68(2) would be considerably softened by the removal of the word "whole". From now on, a consumer suing a manufacturer as the near vendor on the basis of extra-contractual civil liability will not be required to establish that all the elements of the claim arose in Quebec.

For example, if a Quebec consumer suffered damages because of a defect in his car, in Quebec, the fact that the car was manufactured outside Quebec will not prevent an action being brought before the Quebec courts. This is certainly a very desirable amendment.

However, Art. 48 contains a restriction that does not exist in the present law. Even if the defendant has property in Quebec, the Quebec court could not assume jurisdiction unless there were an additional element that provided it with jurisdiction. Such a restriction appears to us to be clearly prejudicial to the interests of the Quebec consumer. If the non-Quebec defendant has assets in this province, why should he be protected from an action in Quebec? On the contrary, we believe that the presence of assets alone should give the consumer the right to bring action, since these assets are the product of business done by the defendant in Quebec.

(e) The Concept of the "Near Vendor" Manufacturer in Quebec Law

We have seen that the present law, like the draft law on the international jurisdiction of the courts, hardly neets the present needs of consumers. In the introduction, we proposed a solution to this problem by using the concept of the near vendor. For this reason, we will examine briefly the development of Quebec case law in this field, as well as its usefulness in the area of immediate concern.

The best example of the near vendor is the manufacturer of consumer goods. The classic case is that of the Quebec consumer who has purchased a car from a dealer whose place of business is in Quebec. The car itself was manufactured or distributed by a non-Quebec company which has no place of business or assets in Quebec. The problem of jurisdiction *per se* has never arisen because the manufacturer or distributor has always submitted to the jurisdiction of the Quebec court. The issue has always been, rather, that of liability of the manufacturer or distributor to the consumer, there being no contractual rights which can be asserted against these parties.

The consumer entered into the contract of purchase with the dealer alone. The dealer ordered the vehicle from the manufacturer or distributor. The car's guarantee, referred to as the conventional guarantee, was given by the manufacturer or distributor, but fulfilled by the dealer.

The civil liability of manufacturers in private international law was considered by the Supreme Court of Canada in Moran v Pyle (National) Canada Ltd.[15] The sale or distribution of goods (for example, cars) takes place on a national scale; the manufacturer or distributor from a foreign jurisdiction thus knows that its goods will enter

> into the normal channels of trade..... and it is reasonably foreseeable that the product would be used or consumed where the plaintiff used or consumed it, then the forum in which the plaintiff suffered damage is entitled to exercise judicial jurisdiction over that foreign defendant. This rule recognizes the important interest the state has in injuries suffered by persons within its territory. It recognizes that the purpose of negligence as a tort is to protect against carelessly inflicted injury and thus that the predominating element is damage suffered. By tendering his products in the market place directly or through normal distributive channels, a manufacturer ought to assume the burden of defending those products wherever

> they cause harm as long as the forum into which the manufacturer is taken is one that he reasonably ought to have had in his contemplation when he so tendered his goods. This is particularly true of dangerously defective goods placed in the inter-provincial flow of commerce.

It may be understood that, in these circumstances, the consumer faced with a defective car will attempt to assert his rights against both the near vendor manufacturer and against the dealer. After all, it is the manufacturer who is mainly responsible for the product and is, therefore, the one who should answer for its defects.

The provincial courts have had to determine the nature of the legal relationship between the consumer and the manufacturer. The courts developed the concept of the near vendor according to which the manufacturer is equated with the vendor. Using this legal device, it has gradually been possible to impose upon the manufacturer almost the same obligations as those imposed on the vendor himself.

(i) Review of the Case Law on the Near Vendor Manufacturer

Following the classic decision of the Supreme Court of Canada in Ross v Dunstall and Emery[16], the Quebec cases clearly support actions brought against a non-vendor manufacturer for latent defects. CC, Art. 1507 and 1522 require the vendor to warrant the article that it sells against all latent defects.

Article 1522 states:

> Art. 1522. The seller is obliged by law to warrent the buyer against such latent defects in the thing sold, and its accessories, as render it unfit for the use for which it was intended, or so diminish its usefulness that the buyer would not have bought it, or would not have given so large a price, if he had known them.

Although no contract existed between Ross, the purchaser, and Emery, the manufacturer, the Supreme Court held that the latter was liable according to the ordinary principle of liability set out in CC, Art. 1503. Thus, according to this decision, the purchaser could sue in the contract against the vendor and also sue in tort against the non-vendor manufacture. Following this decision, the legal presumption of fault in matters of

latent defects was extended by the courts to the near vendor manufacturer under the second paragraph of Art. 1527 which provides:

> Art. 1527. If the seller knew the defect of the thing, he is obliged not only to restore the price of it, but to pay all damages suffered by the buyer. He is obliged in like manner in all cases, in which he is legally presumed to know the defects.

Recently, these principles have been confirmed in cases involving the sale of automobiles. The Quebec consumer can now bring an action against the manufacturer on the statutory warranty against latent defects, even in the absence of a direct contractual relationship.[17]

In Gougeon v Peugeot Ltd. et Belhumeur[18], the Quebec Court of Appeal decided that there is joint and several liability, binding both the near vendor manufacturer and the automobile dealer and that the statutory warranty imposed by the Civil Code with respect to latent defects applies equally against both parties.

In his judgment, Kaufman J. stated:

> The car in question had latent defects; such defects are covered by legal warranty; this warranty binds both the manufacturer and the vendor; ... Appellant was not obliged - nor, indeed limited - to seek redress from Peugeot Canada Ltée. in virtue of the conventional guarantee which existed.

In Fleury v Fiat Motors[19], the Superior Court went even further. In that case, the consumer had brought action gainst Fiat Motors only, abandoning his right to sue the dealer who had sold him the car. It should be noted that the defendant had not manufactured the car but was only the distributor in Canada. The court nevertheless considered that the distributor was bound by the statutory warranty to the consumer, even in the absence of any contract between them. Thus, although the warranty imposed by the Civil Code appears to apply only when there is a contract between the consumer and the vendor, the court has extended its application as though there were such a contract between the distributor and the consumer. Thus the distributor was treated as if it were the immediate vendor of the car.

This principle has been re-affirmed in the recent decision of the Supreme Court of Canada in General Motors of Canada v Kravitz, which was decided on January 19, 1979. In this judgment, the Supreme Court upheld a direct action against the manufacturer, under the statutory warranty covering latent defects, even in the absence of a contract between Kravitz, the consumer, and the company, General Motors.

The doctrine has become so well established over the years that Quebec has incorporated the principle in the new Consumer Protection Act.[20] Sections 53 and 54 of the Act provide a direct remedy for the consumer against the manufacturer, whether the consumer is the original purchaser or has acquired the item subsequently. This remedy is based on ss. 37 et seq. of the Act, which prescribe sale of goods warranty obligations. It should be noted that under this Act, "manufacturer" includes the importer or distributor of goods manufactured outside Canada.

Thus, the consumer has a statutory remedy founded on the principles developed in the case law relating to the duty of the near vendor.

(f) Conclusion

The concept of the near vendor could solve many of the problems involved in the jurisdiction of a Quebec court over a defendant who would not be subject to its jurisdiction under the present rules. This concept could also be of assistance in other provinces of Canada.

More precisely, Quebec could decide to grant jurisdiction to Quebec courts over all manufacturers and distributors who are near vendors, even if they have no assets, place of business, or residence in Quebec.

The consumer would, then, be entitled to bring an action in Quebec against any manufacturer or distributor included in the definition of near vendor. Thus, in the field of consumer law, there would be only one jurisdictional rule conferring international jurisdiction on Quebec courts when the defendant is a near vendor vis-a-vis the consumer.

Who, then, would come within the definition of near vendor? The decision in Moran v Pyle[15], a judgment of the Supreme Court of Canada, is very helpful in that it sets out

a test which is appropriate for determining who is a near vendor. As an example, consider the manufacturer or distributor who plans to sell or to permit the sale of his own products outside his own province. We can assume that the manufacturer or distributor knows or ought to know that his products will enter into the normal channels of trade outside his own province. Thus he becomes a near vendor.

In order to establish the jurisdiction of a Quebec Court, the consumer would only be required to establish that the manufacturer or distributor was the near vendor. This could be done by means of a presumption and should not be difficult to prove. For example, the following factors could be taken as proof of intention:

1. Did the vendor or distributor sell to other distributors in other provinces?

2. Did the vendor or distributor sell to local distributors who, by the very nature of their operation, would re-sell in other provinces?

3. Did the vendor or distributor advertise in other provinces?

4. Did the vendor or distributor produce advertisements aimed at consumers outside his own province?

5. Did the vendor or distributor sell to businesses operating on a national scale? If yes, he must have known that his products would be sold outside his own province.

Thus, the factors derived from the decision in Moran v Pyle[15] may be adopted to define the term "near vendor".

CHAPTER III - RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGGMENTS IN QUEBEC

(a) Introduction

Articles 178 to 180 of the Code of Civil Procedure provide a system for recognition and enforcement of foreign judgments in Quebec.

These rules in the Code of Civil Procedure are old, and in the present context are inadequate, if not obsolete.

(b) The Present System for Recognition and Enforcement of Foreign Judgments

The situation with which we are concerned is that of a non-Quebecer who has obtained a judgment in his own province against a Quebec defendant. This person wants to enforce the judgment in Quebec, where the debtor has assets. What effect will be given this foreign judgment in Quebec? In other words, will a Quebec court recognize this judgment? Clearly, recognition of a foreign decision is an essential step towards enforcement. If a Quebec court recognizes it, then the enforcement procedure will be available.

Unfortunately, recognition is neither automatic nor guaranteed. In effect, the foreign individual is deemed to have brought a new action before the Quebec court, an action which seeks to have the foreign judgment recognized. Thus he asks the Quebec court to give judgment against the debtor founded upon the same conclusion as that reached in the foreign proceedings.

In short, the foreign plaintiff is required to reinstitute proceedings; the procedure will be the same as in any other action brought by a plaintiff in this province, and will follow the same procedure.

The foreign judgment can be enforced only by obtaining a judgment from a Quebec court. In reality, two judgments are needed to obtain the amount owed.

Moreover, a foreign judgment creditor is required to satisfy two requirements before the Quebec courts.

(i) The First Stage

First, the foreign plaintiff must establish that he is entitled to seek recognition of the foreign judgment. The Quebec xourts recognize the authority and jurisdiction of a foreign court if one of the following three criteria is met:

1. if the Quebec defendant is domiciled or resident in the territory of the foreign Court;

2. if the cause of action arose in the territory where the foreign court has jurisdiction, and if the defendant was served in that foreign jurisdiction;

3. if the Quebec defendant has property in the territory of the foreign courts, which property is not "illusory" ("illusories").21

Thus, the Quebec courts have concluded that, if the foreign judgment does not meet at least one of these conditions, foreign creditors cannot proceed to enforce it in Quebec. According to these cases, the judgment sued upon must demonstrate one of these factors conferring jurisdiction, or be dismissed.22

Finally, if it is found that the foreign court does not have jurisdiction, the foreign plaintiff will not be entitled to seek recognition and enforcement. He must begin again as if no action had been brought and no judgment given.

(ii) The Second Stage

Secondly, the foreign plaintiff must establish his right to have the foreign judgment recognized and enforced. At this stage, the Quebec court must decide whether the case should be retried on the merits or whether it should simply declare the foreign judgment valid and enforceable.

The degree of recognition given to the foreign judgment will depend on the opportunity available to the Quebec debtor to present in the original action, a defence on the merits.

The Code of Civil Procedure provides for two levels of protection, depending on whether the foreign plaintiff has a judgment from outside Canada or a judgment from another Canadian province.

Non-Canadian Judgments

CCP, Article 178 governs non-Canadian judgments. It states:

> 178. Any defence which was or might have been set up to the original action may be pleaded to an action brought upon a judgment rendered out of Canada.

This Article originated in old French law.[23] It is completely contrary to the existing rule of common law, that considers a foreign judgment prima facie as res judicata.[24] Thus, CCP, Article 178 says that the defendant can always revive a case which has been concluded outside of Canada because the foreign judgment is res judicata.

What are the possible defences to an action brought under CCP, Article 178?

1. According to Brossard J. in Ryan v Pardo[25], for a defence to be used against the foreign action, it must be one that the Quebec defendant could validly and successfully have raised the foreign court, whether or not it actually was raised. This reduces considerably the possibility of reopening the case as permitted by CCP, Article 178, for the following reasons:

   - it must be a defence that was actually available at the time when the foreign action was instituted, not a defence based on new facts;
   - the defence must be one which, according the the foreign law, could have been validly and successfully raised.

   Subsequent case law has affirmed this position.[26]

2. The defendant can always raise a defence based on our concept of "public order and morality".[27]

3. A Quebec defendant can also deny that he is the defendant in the original action. In that case the foreign creditor must prove on the balance of probabilities, the identity of the defendant.[28]

However, despite the apparent extent of the right to reopen a case based on a judgment rendered outside Canada, certain restrictions are imposed by Article 1220 of the Civil Code. This will be discussed in the next section.

Judgments from Another Province in Canada

CCP, Articles 179, 180 and 181 govern judgments rendered in another Canadian province. They state:

> 179. Any defence which might have been set up to the original action may be pleaded to an action brought upon a judgment rendered in any other province of Canada, provided that the defendant was not personally served with the action in such other province or did not appear in such action.
>
> 180. Any such defence cannot be pleaded if the defendant was personally served in such province, or appeared in the original action, except in any case involving the decision of a right affecting immoveables in this province, or the jurisdiction of a foreign court concerning such right.
>
> 181. In any action against a corporation, any service made in another province in conformity with the law thereof is considered as a personal service within the meaning of articles 179 and 180.

Contrary to the system for non-Canadian judgments, judgments rendered by other provincial courts have the force of res judicata, if the specified conditions set out in these Articles are met.[29]

Even a defence based on our concepts of public order and morality will be rejected: Quebec courts have, for example, ordered enforcement of a judgment based on gambling debts.[30]

Certain commentators are of the view that these Articles set out the American doctrine of "full faith and credit".[31] However, it should be noted that the principles described above are applicable only to a judgment rendered in a contested case. If the judgment in question was rendered by default or without personal service in the province, that judgment will not be considered as res judicata. The merits of the original action may be fully re-examined.

As mentioned above, Article 1220 of the Civil Code provides valuable assistance to persons who hold a foreign judgment. This Article states:

Article 1220 (1) CC

> The certificate of the secretary of any foreign state or of the executive government thereof, and the original documents and copies of documents hereinafter enumerated, executed out of Lower Canada, make prima facie proof of the contents thereof without an evidence being necessary of the seal or signature affixed to such original or copy, or of the authority of the officer granting the same, namely:
>
> 1. Exemplifications of any judgment or other judicial proceeding of any court of Lower Canada, under the seal of such court, or under the signature of the officer having the legal custody of the record of such judgment or other judicial proceeding;

The case law, on the strength of the word "contents" in this Article, has held that a foreign judgment is evidence, as a prima facie presumption, of:

1. the jurisdiction of the foreign court;
2. the facts set out in the judgment;
3. the foreign law on which the court based its decision;
4. the correct application by the court of the foreign law and the validity in fact and in law of the judgment.

Thus, some cases have used Article 1220 to replace what Articles 178 and 179 took away as res judicata.[32]

A Quebec defendant must, therefore, bear the burden of proving the contrary. According to Johnson, Conflict of Laws[33], the presumption as applied in the cases has virtually the same effect as if it were considered res judicata.

(c) Criticism of The Present System

1. The present system assumes that an action must be brought. In our opinion, this is pointless because the foreign plaintiff is forced to bring two actions, one in the foreign jurisdiction and the other in Quebec. In view of the considerable delay involved in bringing an action, we believe

that this requirement no longer serves any purpose and that it means that due recognition is not accorded the foreign judgment.

2. There is a conflict between the presumption created by the cases under CC, Article 1220(1) and the requirement for an action for recognition imposed bu the Code of Civil Procedure. In interpreting the Article on proof, the Quebec courts have given back to a foreign plaintiff what the Code of Civil Procedure took away. Because of this conflict, our present system is very confused and contradictory, to say the least.

3. The criterion for recognition of judgments from other provinces based on personal service on the defendant in the foreign province is unacceptable in private international law and is universally rejected because it is uncertain and vague.[34]

4. Finally, there is little uniformity between the system adopted by the common law provinces and the present Quebec system: Article 178 is contrary to the common law rule, while CCP, Articles 179-181 extend, in a debatable manner, recognition of judgments from other provinces beyond the corresponding common law rules.[35]

(d) Recognition and Enforcement of Foreign Judgments Under the Draft Civil Code

In Volume IX, Chapter 4, Articles 60 to 82, the authors of the code dealt with recognition and enforcement of foreign judgments.

We propose to examine the most important of these Articles, those that may become the law in Quebec in this area. We shall begin with Article 60, which states:

> Article 60 - Subject to Articles 74 and following, the courts of Quebec recognize and declare enforceable judicial decisions rendered outside Quebec, in civil and commercial matters, unless the defendant proves:
>
> 1. that the original authority had no jurisdiction in accordance with Article 63;
>
> 2. that the foreign decision may be subject to normal forms of review according to the law of the place where it was rendered;

3. that the foreign decision is not enforceable in the place where it was rendered;

4. that the foreign decision orders provisional or conservatory measures;

5. that the foreign decision was obtained by fraud in the procedure;

6. that proceedings between the same parties, based on the same facts and having the same purpose, either resulted in a decision rendered in Quebec, whether having the force of res judicata or not, or are pending before a Quebec court, first to be seized of the matter.

This Article summarizes, in part, the existing law. It is based the Hague Convention on the recognition and enforcement of foreign judgments in civil and commercial matters.[36]

The following points should be noted:

(a) the burden of proof is now explicitly recognized as being on the defendant;

(b) paragraphs 1 to 3 codify the principle that the foreign judgment would have no greater effect here than in the country where it originated; for example, if the case had not yet been finally decided in the foreign country;

(c) the word "fraud" in paragraph 5 refers to procedural fraud;

(d) paragraph 6 embodies the result reached in the cases Tourlon Construction Inc v Rusco Industries Inc[37] and Olympia & York Development Ltée v Peerless Rug Limitée.[38] However, it is considerably extended by the words "whether having the force of res judicata or not". The foreign proceedings must therefore be terminated before such an action can be brought here.

Article 61 - A decision rendered by default will not be recognized and declared enforceable, unless the plaintiff proves that the defaulting party received notice of the institution of proceedings in accordance with the law of the place where such decision was rendered.

Nevertheless, the judge may refuse recognition or enforcement if the defaulting party proves that, in view of the circumstances, he was not able to learn of the institution of the proceedings or did not have sufficient time to present his defence.

The draft provides a special procedure for default judgments. It places the burden of proving personal service on the foreign plaintiff; on the other hand, the defendant has the burden of proving that it was impossible to defend, even if the conditions of the first paragraph of Article 61 are met by the plaintiff.

Article 62 - Recognition or enforcement may not be refused merely because the court of origin has applied a law other than that which would have been applicable according to Quebec private international law rules.

This Article is based on Article 7(1) of the Hague Convention. The authors intended that this Article should amend the current law, and in particular, the decision in Karimv Ali[39], which they believe demonstrated "excessive chauvinism".[40]

Article 64 - In determining the jurisdiction of the court of origin, the courts of Quebec are bound by the findings of fact on which the court of origin based its jurisdiction, unless such decision was rendered by default.

This Article must be read in conjunction with Article 63. It establishes a rule for the international jurisdiction of the court of origin: the Quebec judge will be bound by the findings of fact of the foreign court; he has jurisdiction to decide only (1) the legal effect (or limitations) given the facts by the foreign court and (2) the interpretation given of the rules of law by the court of origin in finding that it had international jurisdiction.

Article 65 - The court of origin is considered to have jurisdiction when:

1. the defendant was domiciled in the jurisdiction of the court of origin at the time the proceedings were instituted or, if the defendant is not a physical person, its place of incorporation or its head office was situated within that jurisdiction at that time;

2. the defendant possessed a commercial, industrial or other business establishment, or a branch office in the jurisdiction of the court of origin at the time the proceedings were instituted, and was cited there in proceedings relating to the activity of such establishment or branch office;

3. the action had as its object a dispute relating to immoveable property situated in the place of the court of origin;

4. in the case of injuries to the person or damage to tangible property, the act which caused the damage occurred in the jurisdiction of the court of origin, and the author of the injury or damage was present in that jurisdiction at the time when these acts occurred;

5. by a written agreement, the parties have agreed to submit to the jurisdiction of the court of origin disputes which have arisen or which may arise in respect of a specific legal relationship, unless the law of Quebec would, in this case, give exclusive jurisdiction to its courts;

6. the defendant has contested on the merits without challenging the jurisdiction of the court or making reservation thereto; nevertheless such jurisdiction is not recognized if the defendant has contested on the merits in order to resist the seizure of property or to obtain its release, or if the law of Quebec would in this case give exclusive jurisdiction to its courts; or

7. the person against whom recognition or enforcement is sought was the plaintiff in the proceedings in the court of origin and was unsuccessful in those proceedings, unless the law of Queec would give, in this case, exclusive jurisdiction to its courts.

In every case where recognition of a judgment is disputed on the basis of Article 60, the Quebec court will look to Article 65 in determining whether the court of origin had jurisdiction. It should be noted here that the rules contained in paragraphs 1 to 7 of this Article are similar to the rules of internal jurisdiction (see Articls 48 et seq of the draft).

However, we should point out two significant changes to the existing rules:

1. paragraph 2 extends considerably the jurisdiction of the court of origin over corporations - it appears that the maintenance of any place of business can support jurisdictional competence.

2. paragraph 4, in matters of tort, limits the jurisdiction of the court to the place where the damage occurred. The authors propose that there be a requirement that the tortfeasor be personally present in the territory of the court of origin at the time when the act occurred.

Article 67 - On motion by the defendant, the competence of the court of origin is not recognized by the court of Quebec when:

1. the law of Quebec, either because of the subject matter or by virtue of an agreement between the parties, confers exclusive jurisdiction upon the courts of Quebec to hear the claim which gave rise to the foreign decision;

2. the law of Quebec, either because of the subject matter or by virtue of an agreement between the parties, recognizes a different exclusive jurisdiction; or

3. the law of Quebec recognizes an agreement by which exclusive jurisdiction is conferred upon arbitrators.

Article 67(1) is based on Article 12 of the Hague Convention and would apply to an action brought pursuant to the Consumer Protection Act. According to s. 19 of that Act, Quebec assumes exclusive jurisdiction over all contracts entered into by a Quebec consumer who is in Quebec.

Criticism of the Proposed System

We believe that the proposed system is more in accordance with international law, and so is superior to the current system. However, we believe that there is not sufficient attention paid in the draft to the concept of "near vendor". We also believe that the rule proposed in Article 65(4) is too rigid, and that it would be preferable to amend it to include a rule for recognition and enforcement similar to the rule recognized in Article 32 of the draft and in Moran v Pyle National(Canada) Ltée. That is, if a manufacturer who is the near vendor had put his products on the interprovincial or international market, and his products are available in the consumer's area, a judgment obtained by the consumer should be

recognized by our courts without applying the restrictive principles proposed in Article 65 of the draft.

(e) Conclusion

As we observed with respect to the international competence of a Quebec court, neither the present rules in the Code of Procedure nor those proposed in the draft, adequately meet the needs of consumers.

The costs involved in an action for recognition of a foreign judgment are very high, and the possibility that all the points at issue could be reopened is contrary to sound policy. The consumer is simply discouraged from enforcing a judgment that has been obtained.

We believe that the concept of "near vendor" could solve the existing problems in this area. More specifically, any consumer who has a judgment against a near vendor (either the manufacturer or the distributor of the item purchased) should have the right to obtain recognition of this judgment by the court of the province where the near vendor has his place of business without that court reopening the merits of the case. Thus, there should be automatic recognition by the court where the near vendor is domiciled or has his place of business.

Default by a defendant described as a near vendor in contesting his status when an action is brought in the consumer's province would cause it to lose all rights to contest it later when the request for recognition of the foreign judgment is submitted to the court in his own province.

By simplifying the procedure for recognition and enforcement of a foreign judgment in this way, consumers will be better protected, because the foreign judgment will have real value.

CHAPTER IV - CHOICE OF LAW RULES IN THE PRIVATE INTERNATIONAL LAW OF QUEBEC

When a consumer brings an action before a Quebec court and problem of jurisdiction or recognition of a foreign judgment arises, the question of what law applies is presented. The Quebec court must then determine which province's law will be used in deciding jurisdiction or the merits of the claim. The rules on what law should apply are found in the Civil Code.

The present rules on conflict in matters of contract are contained in Article 8 of the Civil Code, which states:

> Art. 8. Deeds are construed according to the laws of the country where they were passed, unless there is some law to the contrary, or the parties have agreed otherwise, or by the nature of the deed or from other circumstances, it appears that the intention of the parties was to be governed by the law of another place; in any of which cases, effect is given to such law, or such intention expressed or presumed.

This Article recognizes the freedom of contractual intention of the parties. For example, if the contracting parties are domiciled in Quebec and wish to contract that they be subject to the law of England, our courts will give effect to this expression of their wishes.[41]

However, Section 19 of the new Consumer Protection Act provides that a clause in a contract that subjects the contract in whole or in part to a law other than an Act of the Parliament of Canada or of the Legislature of Quebec is prohibited. Clearly, this restricts considerably the scope of Article 8 of the Civil Code. It should be remembered that Section 19 applies only to consumer contracts entered into in the Province of Quebec.

In matters of tort, the choice of law rules are those set out by the Supreme Court in O'Connor v Wray.[42] There is a double test: a Quebec plaintiff must first prove that the act that caused the damage gave rise to an action for damages under Quebec law, and that the act was an "unlawful" or "unjustifiable" act according to the law of the place where the tort occurred. These two conditions must both be satisfied or the action will be dismissed. The courts will then decide the other fundamental questions under the lex fori.

However, these rules are obsolete and frequently inconsistent. They require additional expenses to be paid by the consumer, since the consumer must give evidence of the foreign law through an expert witness.

Conclusion

The present rules concerning choice of law have been rendered obsolete by the present economic context. Simpler rules must be established to meet the needs of the consumer. This is what we will propose in the next chapter.

CHAPTER V - RECOMMENDATIONS AND CONCLUSIONS

As in the common law provinces of Canada, the private international law of Quebec concerning the jurisdiction of courts, enforcement of foreign judgments and choice of law rules is governed by obsolete concepts which no longer meet consumers' needs. Considering the difficulties encountered by consumers, we propose that the present rules be replaced by a uniform Canada-wide system.

The Changes Proposed are:

1. Each Canadian province, including Quebec, will assume jurisdiction jurisdiction over the near vendor. That is, a consumer would have the absolute right to bring an action near vendor. The consumer's domestic court would have jurisdiction over all near vendors, even if they had no assets or place of business in the consumer's province.

2. The near vendor should include the manufacturer and distributor of the product. This is in accordance with the Quebec Consumer Protection Act.

3. With respect to who would be a near vendor, we would have to rely on Moran v Pyle[15] (at pp 408-409). More specifically, any manufacturer or distributor who causes his goods to enter into the normal channels of trade in Canada would be considered as a near vendor. This would include any manufacturer or distributor who intends to sell or cause his products to be sold in a province other than his own. This presumption would be made when one of the following is proved:

    1. Did the vendor or distributor sell to other distributors in other provinces?

    2. Did the vendor or distributor sell to distributors in his own province who would make sales in other provinces because of the nature of their businesses?

    3. Did the vendor or distributor advertise in the media in other provinces?

    4. Did the vendor or distributor advertise to consumers outside his own province?

5. Did the vendor or distributor sell to businesses operating on a national scale? If yes, he ought to have known that his products would be sold outside his own province.

4. In deciding whether it has jurisdiction to hear the case on the merits, the court must first determine whether the foreign defendant is a near vendor. Only at this point could the foreign defendant plead this exception to the jurisdiction of the provincial court, on the ground that he is not a near vendor. Default in pleading this point at this stage would be grounds for refusing to allow him to contest that issue in subsequent proceedings. Thus, he would no longer be entitled to raise this defence when the court of his own province decides whether to recognize the foreign judgment.

5. The applicable law would be that of the province where the consumer purchased the product. That is, the consumer and the vendor could not elect as to domicile.

Of course, it will normally be the lex fori that will apply to the action, because consumers generally purchase within their own province.

We believe that such a rule is desirable and just, because the consumer should not have more rights than those granted by his own province or by the province where he chose to purchase the product. Similarly, the near vendor who has decided to permit sales of his products in the consumer's province did so with knowledge of the laws of that province. Presumably, he took these laws into account in setting the sale price of his product and in distributing his product outside his own province.

6. Recognition and enforcement of a foreign decision in the near vendor's province, the final step, should be automatic for all consumers. All judgments of a court in the consumer's province would be recognized by the court in the near vendor's province with a minimum of formalities and without an opportunity for the defendant to dispute. Enforcement of the judgment would follow the rules of the defendant's province.

This system exists already for judgments in divorces.

How could the provinces of Canada implement the above proposals? We see two possible approaches:

1. As is done in the United States, the federal government could draw up a uniform code which each province would be invited to adopt. Each province that accepted would be required to apply the proposed rules.

2. The provinces themselves could enter into reciprocal agreements under which each province would undertake to apply all the rules concerning the jurisdiction of courts, recognition of foreign judgments and choice of law .

Clearly, it would be very difficult to take the first approach, that of a uniform code drawn up by the Federal Government. In our political context, we could expect the provinces to be very hesitant to agree to allow the Federal Government any jurisdiction whatever in the field of consumer affairs.

Reciprocal agreements among the provinces could be effective. Quebec, for example, has already proposed such reciprocal agreements between provinces in other matters such as the language of instruction. Reciprocal agreements already exist between provinces in other matters. Thus, the principle has been established.

However, considering the difficulties in coming to such agreements, it would be desirable to take a third approach in the short term: to have the federal government propose rules in this area and invite the provinces to examine them and to give such effect to them as the provinces may choose.

1. Code of Civil Procedure, S.Q. (1965) Chapter 80.

2. Assurance du Crédit -vs- Dell, (1959) C.S. 309.

3. Kondylis -vs- Grehound Lines of Canada Ltd., (1973) R.P. 241.

4. Dame McLellan -vs- Stevenson, (1963) C.S. 16. This case contains a thorough study of the law and the cases on this point.

5. Alimport (Empressa Cubana Importadora de Alimentos -vs- Victoria Transport Ltd., (1977), 2 R.C.S. 858.

6. The First National Bank of Boston -vs- La Sarchi Co., (1964), B.R. 801.

7. Johnson, Walter S., Conflict of Laws, Montreal, Wilson et Lafleur Ltée, (1962, 2e éd.) page 1033.

8. McCurry -vs- Reid (1900), 3 R.P. 165.
Porter -vs- Canadian Rubber Co. of Montreal, (1909), L8 B.R. 534.
Deshaies -vs- Deshaies (1963) R.P. L65.
Ross et al - vs- Tsmura (1972) C.S. L94.
Southern Pacific Company -vs- M. Botner and Sons Inc. (1973), R.P. 97.
West India Trading Co. Inc. et al -vs- Saguenay Shipping Ltd., et al, (1975), R.P. 403.

9. Trower and Sons Ltd, -vs- Ripsteub and Gillespie (1944) 4 D.L.R. 497 (P.C.).

10. Johnson, supra Conflict of Laws, p. 1025.

11. Landry -vs- Hurdman, (1903) 5 R.P. 273.
Hamel -vs- Stapleton (1903), 9 R. de J. 365.
Vipond -vs- Grimon (1893), 3 C.S. 536.
Thomas Caya Inc. -vs- Medenco (1968), C.S. 15.
Péladeau -vs- Audit Bureau of Circulations (1966), R.P. 164

12. Magann -vs- Auger (1901), 31 R.C.S. 186.
Charlebois -vs- Baris (1928), R.C.S. 88.
Timossi -vs- Balcer (1913), 44 C.S. 36.
Théberge -vs- Girard (1922), 32 B.R. L04.
1L'Association Pharmaceutique de la Province de Québec -vs- The Timothy Eaton Co. (1931), 50 B.R. 482.
Les Enterprises P.E.B. Ltée -vs- Laurion Equipment Ltée (1974), C.S. 217; the Court held that when a case must receive additional approval in Montreal, the contract is necessarily concluded in Montreal, wherever the common intent occurred.

13. Vallée - vs- World Plywood and Veneer Co. Ltd, (1906), R.L. 245.
Les Editions Françaises -vs- Brousseau (1967), P.R. 211.
See also: P.A. Crépeau, La compétence internationale des tribunaux québécois en droit international privé, (1966), Rev. de l'association Québécoise pour l'étude comparative du droit, p. 129.

14. Civil Code of Quebec, book I, draft Civil Code.

15. Moran -vs- Pyle (National) Canada Ltd. (1975), 1 S.C.R. 393, à la page 409.

16. Ross -vs- Dunstall & Emery (1921) 62 R.C.S. 293.

17. Rioux -vs- G.M. Products of Canada Ltd. & Ste-Thérèse Autos Inc. (1971), C.S. 828.
Bertrand Godbout -vs- John Deere Ltée & B.G. Equipment Inc. (1972) C.S. 380.

18. Gougeon -vs- Peugeot Canada Ltd & Belhumeur, (1973) C.A. 824.

19. Fleury -vs- Fiat Motors (1975), C.S. 1102.

20. Bill 72, proclaimed December 22, 1978.

21. Stacey -vs- Beaudin (1886), 9 L.N. 363.
Monette -vs- Larivière (1926), 40 B.R. 350, 359.

22. May -vs- Ritchie (1872), 16 L.C.J. 81.
Stacey -vs- Beaudin (1886), 9 L.N. 363.
Howie -vs- Stanyar (1944), C.S. 305.

23. Decree of 1629, also known as the Code Marillac.
Art. 121. See also: Johnson, Conflict of Laws, 2e édition (1962) at pages 760-773.

24. Mignault, Doit Civil Canadien, T. 6, p. 103.
Nadeau & Ducharme, La preuve, Traité de Droit Civil du Québec, Vol 9, N 155, p 450.
Howard Guernsey Mfg Co v King (1894), 5 CS 182.
Carsley v Humphrey (1910), 12 RP 133.
Knox Bros v Lingle (1924), 38 BR 325, 236.
Ryan v Pardo (1957), RL 321 (Brossard, J).
Toulon Construction Inc v Rusco Ind Inc (1973), RP 138 (CA).

25. Ryan v Pardo (1957) RL 321.

26. McDowell v McDowell (1954), CS 319 (Smith J): the Quebec defendant could not plead changed circumstances. Orsi v Irving Samuel Inc (1957), CS 209 (Smith J).

27. Conflict of Laws, 2nd edition, p 793, and Ryan v Pardo, (1957) RL 321.

28. Bentley v Stock (1898), MLR 4 SC 383.
Mignault, Vol 5, 638.
Marquette v Smith (1894), 5 CS 376.
Chapman v Gordon (1864), 8 LCJ 196.

29. Toulon Construction Inc v Rusco Ind Inc, supra.
Blackwood v Percival (1903), 23 CS 5.
Chechik v Rabinovitch (1929), RCS 400.
Johnson, supra, at pp 819 and 920.

30. McCurry v Reid (1902), 4 RP 251, reversing 3 RP 165.
Riordan v McLeod (1911), 13 RP 156.

31. Ryan v Pardo, supra, 819 ff.

32. Bauron v Davies (1897), 6 BR 547, reversing (1897) 11 CS 123 the leading decision.
Haney v Mahaffey (1921), 23 RP 225 (C. of revision).
Courtney v Laplante (1932), 53 BR 540, 549.
Schatz v McEntyre (1935), RCS 238, reversing (1934), 56 BR 520 (the documents filed under Art 1220(1) CC "afford the best evidence that the law therein applied is the law in force in the country in which the judgment was rendered").
Spohn v Bellefleur & Vanier (1956), BR 608.

33. Supra, p 799.

34. Nadelmann, The Enforcement of Foreign Judgments in Canada (1960), 38 Canadian Bar Review 68, p 83.

35. Kennedy, "Recognition of Judgments in Person - The Meaning of Reciprocity, (1957), 35 Canadian Bar Review, 123.

36. Recueil des Conventions de La Haye, (1973), p. 106 et seq.

37. Toulon Construction Inc. -vs- Rusco Industries Inc. (1973), R.P. 138 (C.A.).

38. Olympia and York Development Limited -vs- Peerless Rug Limited (1975) C.A. 445.

39. (1971) C.S. 439.

40. On this point, see the comments of the codifiers, Report, Vol. 2, t. 2, 1010.

41. Vipond -vs- Furness Withy Company Limited (1917), 54 SCR 521, 527.

42. O'Connor -vs- Wray (1930), SCR 231.